

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JERALD ALAN HAMMANN,

Plaintiff,

vs.

800 IDEAS, INC.,

Defendant.

Case No. 2:08-cv-00886-LDG-GWF

ORDER

Motion to Compel (#79)

This matter is before the Court on Plaintiff Jerald Alan Hammann's Motion to Compel Discovery (#79), filed May 20, 2010; Plaintiff's Affidavit Regarding Documents (#81), filed May 20, 2010; Defendant's Opposition to Plaintiff's Second Motion to Compel Responses to Interrogatories Served Upon Defendant (#84),¹ filed June 7, 2010; and Plaintiff's Reply Memorandum to Motion to Compel Discovery (#118), filed June 16, 2010. On June 23, 2010, the Court held a hearing on the present matter.

BACKGROUND

Plaintiff Jerald Hammann has sued Defendant 800 Ideas, Inc. in this action for violations of the Communications Act of 1934, 47 U.S.C. §§151, 201(a) and (b), and regulations adopted pursuant thereto, relating to the hoarding, brokering and warehousing of toll-free telephone numbers in violation of 47 C.F.R. §52.107(a)(1) and (2) and §52.105(b), and for violation of lag time and first come, first serve regulations under §52.103(a)(2) and §52.111. Plaintiff also accuses Defendant of monopolizing or attempting to monopolize trade in violation of 15 U.S.C. §2. Plaintiff's lawsuit arises out of his efforts beginning in August 2000 to obtain the toll free

¹ Defendant's opposition also included the affidavits of Joseph Boyle and Susan Parker, as well as several exhibits, which were filed separately as documents no. 85-94.

1 telephone numbers 800-246-4238 and 888-246-4238 for a prospective business called “Choice
2 Time.” Plaintiff allegedly discovered that these numbers and numerous other toll-free telephone
3 numbers were being hoarded, brokered, warehoused, etc. in violation of Federal law. In particular,
4 Plaintiff alleges that on August 9, 2000 he made contact with Richard Jones, a representative of an
5 entity known as Ideas.com, and also allegedly a representative of Defendant 800 Ideas, Inc. Mr.
6 Jones offered to sell Mr. Hammann an Internet domain name (worth approximately \$35) for
7 \$100,000 with the 800-246-4238 number included as part of the package. Mr. Jones also allegedly
8 offered to sell him an Internet domain name for \$80,000 with the 888-246-4238 number included
9 as part of the package. *See First Amended Complaint* (#26), ¶¶ 24-25.

10 Mr. Hammann filed an action against 1-800 Ideas.com, Inc., 1-800 San Diego Inc. and
11 individual defendants Steven Parker, Richard Jones and David Sprouse in the United States District
12 Court for the District of Minnesota in 2003. *See Hammann v. 1-800 Ideas.com, Inc., et.al.*, Case
13 No. 03-3342 (DWF/SRN) (hereinafter “Minnesota action”). The Defendant in this action, 800
14 Ideas, Inc., was not initially named as a defendant in the Minnesota action. On November 24,
15 2004, the magistrate judge in the Minnesota action ordered the defendants to provide responses to
16 Mr. Hammann’s requests for production of documents relating to toll free numbers. *See Minnesota*
17 *action* (#96). On June 17, 2005, the magistrate judge granted Mr. Hammann’s motion for sanctions
18 for defendants’ violation of the order and based on the manner in which the defendants produced
19 documents to Mr. Hammann. The magistrate judge also expressed her doubts regarding
20 defendants’ representation that they did not retain records regarding the toll free numbers in
21 electronic data bases. *Id.* at 16, fn. 5. In support of their objection to the magistrate judge’s
22 sanction order, the defendants filed an affidavit by David Sprouse, the president of 1-800 Ideas.com
23 who stated that while the defendants had records responsive to the discovery requests, it would be
24 unduly burdensome for the defendants to produce such records and that production would also
25 violate the confidentiality interests of the defendant’s clients. *See Sprouse Affidavit* in Minnesota
26 action (#100). On August 15, 2005, the district judge upheld the magistrate judge’s sanction order.
27 Minnesota action (#103).

28 On October 24, 2005, the magistrate judge in the Minnesota action granted Mr.

1 Hammann's motion to amend the complaint to add 1-800 Ideas, Inc. as a defendant. In granting the
2 motion, the court stated:

3 . . .

4 Plaintiff argues that despite Defendant's prior representations, 800
5 Ideas Inc. was the subscriber to the 800 number at issue when
6 Plaintiff requested it from Qwest. In addition, Plaintiff states that
7 800 Ideas, Inc. contracted with Choice Mortgage USA for the use of
8 the disputed 888 number and that 800 Ideas, Inc. was involved for
9 both the disputed 800 number and the disputed 888 number through
10 June 26, 2001. Plaintiff also claims that 800 Ideas, Inc. was listed as
11 the subscriber to the disputed 800 number in the SMS database.

12 *Minnesota action*, Order (#118), filed October 24, 2005, p. 3.

13 The court found "that the addition of 800 Ideas, Inc. as a party to this lawsuit conforms to
14 the evidence in this case and will allow the Complaint to be amended to add that party." *Id.* On
15 July 14, 2006, however the magistrate judge recommended that 1-800 Ideas, Inc.'s motion to
16 dismiss based on lack of personal jurisdiction be granted. The district judge adopted the magistrate
17 judge's recommendation in a published decision issued on September 7, 2006. *See Hammann v. 1-*
18 *800 Ideas.Com, Inc., et.al.*, 455 Supp.2d 942, 965 (D.Minn. 2006). In recommending dismissal of
1-800 Ideas, Inc. based on lack of personal jurisdiction, the magistrate judge cited the affidavit of 1-
800 Ideas, Inc.'s president, Susan Parker,² who stated that 1-800 Ideas, Inc. had not engaged in any
business activities in Minnesota.

19 The magistrate judge also cited the following factual allegations that Plaintiff made in
20 support of personal jurisdiction over 1-800 Ideas, Inc.: (1) In 1993, 1-800-Ideas, Inc. acquired the
21 disputed 800 number and became the listed subscriber for that number in the SMS database; (2) if
22 ever an affiliation existed between 1-800 Ideas, Inc. and 1-800 Ideas.com, Inc., that affiliation was
23 terminated prior to the end of 1995; (3) in 1997, 1-800 Ideas, Inc. began providing
24 telecommunications services to Choice Mortgage USA, Inc., an unaffiliated New Hampshire
25 corporation; (4) at least through June 26, 2001, 1-800 Ideas, Inc. was invoiced for the disputed 800

26
27
28 ¹Susan Parker is reportedly the wife or ex-wife of Steven Parker, who was an officer of 1-
800 Ideas.com and the other entity defendants in the Minnesota action.

1 number and numerous other toll-free numbers; (5) in 2002, either 1-800 Ideas, Inc. or 1-800
 2 Ideas.com, Inc. began providing telecommunications services to 1-800 San Diego, Inc., a California
 3 corporation unaffiliated with 1-800 Ideas, Inc.; and (6) in 2004, 1-800-Ideas, Inc. was listed as the
 4 subscriber in the SMS 800 database for the disputed 800 number. *Id.*, 455 F.Supp.2d at 965. In
 5 recommending that 1-800 Ideas, Inc.’s motion to dismiss be granted, the magistrate judge stated:

6 Assuming, arguendo, that the above assertions are true, the
 7 Court finds that none of them assert that 800-Ideas, Inc. purposefully
 8 contacted Minnesota. In fact, the above allegations do not assert
 9 800-Ideas, Inc. had any connection to Minnesota at all. Plaintiff
 10 alleges that, on August 6, 2000, he contacted a local responsible
 11 organization, Qwest Communications, to secure the 800-246-4238
 12 and 888-246-4238 numbers. (Fifth Amend. Compl. ¶ 47.) Qwest told
 13 Plaintiff that 1-800 Ideas.com was the subscriber listed for the 888
 14 number. (*Id.* ¶ 50.) Plaintiff contends, thereafter, he initiated a search
 to find the subscriber listed for the 800 number. (*Id.* ¶ 52.) According
 to Plaintiff, this search led him to Communications Management
 Services which later indicated that 800 Ideas.com was the responsible
 Organization for both the 888 and the 800 number. (*Id.* ¶ 63.)
 Plaintiff has not alleged that 800-Ideas, Inc. advertised in Minnesota
 or otherwise tried to contact him or any other potential Minnesota
 customer or had any other contact with Minnesota.

15 *Id.*, 455 F.Supp.2d at 965-6.

16 The magistrate judge also recommended that Mr. Hammann’s motion for summary
 17 judgment against 1-800 Ideas.com, Inc., 1-800 San Diego Inc. and the individual defendants be
 18 denied. *Id.*, 455 F.Supp.2d at 966-78. In his order adopting the magistrate judge’s
 19 recommendation, the district judge stated that he was “given pause” because “the conduct engaged
 20 in by these companies with respect to toll-free numbers appears to be precisely the kind of conduct
 21 that the Communications Act and regulations promulgated under the Act were intended to
 22 prohibit.” *Id.*, 455 F.Supp.2d at 948. The district judge found, however, that because material
 23 facts appeared to be disputed or unclear, it was prudent to accept the magistrate judge’s
 24 recommendation. The district judge also stated that “[t]he Court obviously believes that Hammann
 25 has a strong case on liability.” He, nevertheless, cautioned Plaintiff to be realistic about his
 26 prospects of recovering any significant damages. *Id.* Following the September 7, 2006 decision,
 27 the parties in the Minnesota action, which no longer included 1-800 Ideas, Inc., settled the case.
 28 Mr. Hammann thereafter filed this action in the District of Nevada against 800 Ideas, Inc. on July 8,

1 2008.

2 **DISCUSSION**

3 **Interrogatory No. 11**

4 Plaintiff requests that Defendant provide him with the physical address where Susan Parker
5 could be served with a subpoena in her personal capacity. (#84 at 5). Defendant responded by
6 raising various objections and providing Plaintiff with Ms. Parker's post office box, rather than a
7 physical location where Ms. Parker resides. (#84 at 5-7). Plaintiff argues that Defendant should be
8 compelled to provide him with Ms. Parker's address so that he might depose Ms. Parker.

9 The Court finds Plaintiff's request that Defendant be compelled to respond is without merit.
10 The interrogatory itself may have been relevant as Ms. Parker may have had knowledge relevant to
11 Plaintiff's claims or defenses raised by 800 Ideas, Inc. However, discovery is now closed and
12 Plaintiff was not prejudiced by Defendant's failure to provide Ms. Parker's residential address.
13 Plaintiff had other options available to him if he wished to take the deposition of Ms. Parker. He
14 could have simply noticed Ms. Parker's deposition and questioned her about the subject matter of
15 this action. Alternatively, Plaintiff could have noticed a deposition for the person most
16 knowledgeable at 800 Ideas, Inc. and noticed Ms. Parker by name as she is a principal officer,
17 director and shareholder of 800 Ideas, Inc. In either instance, Defendant would have been required
18 to produce Ms. Parker for a deposition without Plaintiff having to subpoena her. Plaintiff never
19 noticed the deposition of Ms. Parker or attempted to depose her. As a result, the Court upholds
20 Defendant's objections as to interrogatory no. 11 and denies Plaintiff's request that Defendant be
21 compelled to further respond.

22 **Interrogatory No. 24**

23 Plaintiff requests that Defendant identify the financial institution in which Defendant held
24 accounts for the period beginning from the date Defendant acquired the disputed 800 Number to
25 the present. (#84 at 8-9). Defendant objects to the interrogatory as not relevant, unduly
26 burdensome and overly broad. Plaintiff argues that the financial institution records are relevant and
27 will assist him in showing that Defendant has retained control of the disputed 800 number even
28 though Defendant previously stated that it sold all of its toll-free telephone numbers to Travel

1 Services International, Inc. However, Plaintiff has offered the Court no in support of this assertion.
2 In contrast, Defendant represented to the Court and has submitted an affidavit stating that 800
3 Ideas, Inc. has not been in operation since 1997 as an ongoing business. (*See* #86). Plaintiff has
4 not developed any proof that Defendant was in operation after this date and has not shown the
5 Court that Defendant controlled the disputed numbers after 1997. As a result, Plaintiff has failed to
6 demonstrate the relevance of the financial records to his claims and the Court will deny his request
7 to compel Defendant to further respond.

8 **Interrogatory No. 38**

9 At the hearing on this matter, Plaintiff stated that he now believed that Defendant has
10 accurately and fully answered this interrogatory. Plaintiff withdrew his request for the court to
11 compel further response to this interrogatory.

12 **Interrogatory No. 40**

13 Plaintiff requests that Defendant identify any monetary funds 800 Ideas, Inc. and Susan
14 Parker provided to 1-800 Ideas.com, Inc. (#84 at 14-15). Defendants object to the discovery
15 request as not relevant, overbroad and unduly burdensome. (*Id.* at 14-16). Plaintiff argues that the
16 interrogatory is relevant because he is attempting to show that Defendant, Susan Parker and 1-800
17 Ideas.com, Inc. are affiliates of one another.

18 Defendant states that it supplemented its answer to state any affiliation between 800 Ideas,
19 Inc. and 1-800 Ideas.com, Inc. However, Defendant has not answered the interrogatory with
20 respect to Ms. Parker. As Ms. Parker is a principal officer, director and shareholder of 800 Ideas,
21 Inc., the interrogatory is relevant to Plaintiff's claims. Therefore, the Court will order Defendant to
22 supplement its answer to the interrogatory. Accordingly,

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

George Foley Jr.
GEORGE FOLEY, JR.
United States Magistrate Judge